

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2264 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHOITHARAM SANVALDAS CHAVLANI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YS LAKHANI for Petitioner  
MR SJ DAVE, AGP for Respondent No. 1,2 & 4  
MR SUNIL C PATEL for Respondent No. 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/06/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 7/3/1997 passed by the respondent no. 1 being the District Magistrate u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 (for short 'PBM Act').

2. The synopsis of the grounds of detention supplied by the learned advocate for the petitioner indicates that the petitioner is alleged to be indulging in black marketing activities by getting grain, wheat, rice, sugar, kerosene and other products from several licence holders by extending financial help. Such products are controlled products under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. The petitioner has been running his grain business in the name and style of "Rajavir Traders". He, however, has stocked the control products in his shop and his nephew's shop in the name and style of "Govinda Provisions Stores", which is a Government controlled Licence shop. He has accordingly been carrying on black marketing activities.

It has been alleged that the petitioner was having fair price shop, shop no. 60 under licence no. 8/81 at Varasia, R.T.O. Road, Vadodara. In the management of the affairs of the fair price shop serious irregularities were found and, therefore, District Civil Supply Officer cancelled the licence by his order dated 20/11/1995 (Order No. 20/95). It has further been alleged that the fair price shop run by the petitioner's son came to be inspected and serious irregularities were found. Hence, the District Civil Supply Officer ordered confiscation of stock of wheat valued Rs.8,000/- and deposit amount of Rs.750/-. The petitioner had been rendering financial help for above period to the other fair price shop holders or engaging himself in the aforesaid alleged activity. It has then been alleged that shop of one Shankar Kodarbhai (shop no. 44) came to be inspected by the Deputy Collector, Chhota Udepur and statement of licence holder Shankar Kodarbhai Prajapati was recorded. It was disclosed in the said statement that the petitioner has been rendering financial help to the said fair price shop holder and in consideration thereof 7 gunny bags of sugar out of 20 gunny bags released on permit to the aforesaid shop holder were unauthorisedly received by the petitioner. Out of the said 7 gunny bags 5 have been taken on stock Patrak. No bills have been produced for bringing such stock and thereby has unauthorisedly obtained sugar from licenced holders and has been selling the same in black market. It has then been alleged that one Smt. Mayadevi Ramchandra Advani's shop was inspected by the Mamlatdar,

Vadodara (Rural) on 6/3/1997 and in her statement it was disclosed that the affairs and management of the shop were attended to by the petitioner's servant one Mr. Ramesh Deshbhakt, who was paid Rs.1500/- per month. The licence holder of the said shop is aged about 80 years and she is not able to attend to the affairs of the shop herself. The petitioner has been unauthorisedly managing the affairs of the said shop and at the time of inspection less quantity of wheat, rice and sugar was found. It has also been alleged that one Gagubhai Mansangbhai Raj's fair price shop was inspected by Mamlatdar Shri Narvad on 6/3/1997. It was disclosed in the statement of Shri Gagubhai that the petitioner was rendering financial help to him and thereby indirectly managing the affairs of the said shop, in the inspection of which, many irregularities were found.

3. Reference has then been made to the inspection of fair price shop of one Ravjibhai Prabhatbhai of Sokhada on 6/3/1997. In the statement of the said fair price shop holder it was also disclosed that the petitioner was rendering financial assistance to him and indirectly managing the affairs of the shop. It has then been alleged that the petitioner has been unauthorisedly managing the affairs of one Rajavir Traders in which petitioner's son is a partner with licence holder Vedomal. As per the statement of H.M. Dabhoivala Sai Rajavir Shop the petitioner has been buying stock of wheat and rice and bill no. 35053 dated 12/1/1997 provides a piece of evidence in support of allegation that the petitioner has been managing affairs of Sai Rajavir Traders. Licence of Sai Rajavir Traders is only for grains, pulses and edible oil and there is no licence for sugar. However, the petitioner sold huge quantity of the said articles by getting the same from the licence holder. The stock Patrak would reveal the following particulars of the stock of sugar :-

Month Stock of sugar shown in stock

Patrak.

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January '95 21 gunny bags

February '95 33 gunny bags

March 5 gunny bags

Referring to the above transactions and the statement of Shankar Kodarbhai it has been alleged that the petitioner has been selling sugar without licence by collecting the said article from fair price shop and selling it in black marketing.

4. It has been finally alleged that the petitioner's nephew Sunilkumar Chavlani runs a fair price shop under licence no. 13/96 and upon the inspection thereof carried out on 6/3/1997 dealings in sugar has been carried on as particularised in the grounds of detention, although sugar is not included in the licence. It has been alleged that the petitioner has been committing serious irregularities and carrying on business of essential commodities such as wheat, rice, sugar and kerosene in black marketing and has thereby committed breach of various provisions of the Gujarat Essential Articles Dealers (Regulation) Order, 1977 and condition no. 4(3) of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and section 3 of the Essential Commodities Act, 1955. The petitioner came to be detained under the aforesaid circumstances as stated above.

5. The petitioner has challenged the impugned order of detention and his continued detention on number of grounds inter-alia on the ground that atleast 10 documents are on the face of them partly illegible. The ground appears in para. 4(5) at page 9 of the petition. Mr. Lakhani pointed out the page nos. of documents being 299, 303, 307, 311, 317, 319, 321, 351, 387 and 389. It has been submitted by Mr. S.J. Dave, Ld. A.G.P. that out of the aforesaid documents the dates appearing in documents at pages 303, 307, 317 and 351 can atleast be inferred. He, however, conceded that rest of the documents are partly illegible as alleged by the petitioner. In my opinion, supply of partly legible documents would adversely affect the detenu's right to make effective representation as contemplated by Article 22 (5) of the Constitution of India. If necessary reference may be made to a decision of this Court in the case of Pokhrabhai Sohanbhai Chandel v/s. District Magistrate, Surat, reported in 32(2) - 1991(2) G.L.R. 753, which in turn has referred to a decision of the Hon'ble Supreme Court in the case of Smt. Dharmista Bhagat v. State of Karnataka & Anr. reported in 1989 Suppl. (2) S.C.C. 155. The result is that the continued detention of the petitioner has been rendered illegal.

In view of what is stated above, continued detention of the petitioner under the impugned order is held illegal and the petitioner - detenu- Choitharam Sanvaldas Chavlani is directed to be set at liberty, if he is not required to be detained for any other case. Rule made absolute accordingly.

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